

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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BOBBY LEE MONTGOMERY,

Plaintiff,

v.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, et al.,

Defendants.

Case No. 2:12-cv-00817-MMD-NJK

ORDER ACCEPTING REPORT AND
RECOMMENDATION

Before the Court is Magistrate Judge Nancy J. Koppe's Report and Recommendation ("R&R") (dkt. no. 62), recommending the Court grant Defendant Las Vegas Metropolitan Police Department's Motion to Strike the Amended Complaint (dkt. no. 52). Judge Koppe entered the R&R on May 7, 2014. Plaintiff filed an Objection on May 23, 2014. Defendants filed a Response (dkt. no. 65) and Plaintiff filed a Reply (dkt. no. 66).¹ The R&R is accepted and adopted in full.

On April 19, 2013, the Court entered an Order: (1) dismissing all claims against individual Clark County Defendants with prejudice; (2) dismissing with leave to amend claims against Clark County, LVMPD and individual defendants acting in their official capacities; (3) dismissing with leave to amend claims against individual defendants unsupported by allegations of their involvement in Plaintiff's injuries; and (4) dismissing

¹Plaintiff was not given permission to file his Reply (dkt. no. 66) and it is procedurally improper. However, given Plaintiff's *pro se* status, the Court takes it into consideration.

1 with leave to amend Plaintiff's malicious prosecution claims. (Dkt. no. 40 at 11–12.) The
2 Court also determined that Plaintiff's Fourth Amendment search and seizure claims were
3 sufficiently pled as to individual LVMPD defendants Officers Turner, Rocha, Herlean,
4 Fenrich, Fox, Robinson and Miranda. (*Id.* at 6–7, 9.)

5 In response to the Court's order, Plaintiff filed a document titled "Opposition
6 Pleading Motion for Judgment with Leave to Amend." (Dkt. no. 41.) The Court entered
7 an order striking this filing, finding that, to the extent it was a proposed amended
8 complaint, it was incoherent and failed to meet the minimum standards of Fed. R. Civ. P.
9 8(a). (Dkt. no. 46.) In light of his *pro se* status, the Court extended the time for Plaintiff to
10 file an amended complaint. (*Id.*) The Court stated that "[t]his case will proceed on the
11 remaining claims in the Complaint in the event the Plaintiff fails to file a proper amended
12 complaint in compliance with the Court's orders and Rule 8 of the Federal Rules of Civil
13 Procedure." (*Id.*) On February 3, 2014, Plaintiff timely filed the Amended Complaint (dkt.
14 no. 49) and Defendant LVMPD moved to strike (dkt. no. 52). The R&R finds that the
15 Amended Complaint fails to meet the standards of Rule 8 and recommends dismissing
16 the Amended Complaint claims with prejudice and proceeding on the claims remaining in
17 the Complaint, as per the Court's warning. (Dkt. no. 62.)

18 This Court "may accept, reject, or modify, in whole or in part, the findings or
19 recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). Where a party timely
20 objects to a magistrate judge's report and recommendation, then the court is required to
21 "make a *de novo* determination of those portions of the [report and recommendation] to
22 which objection is made." 28 U.S.C. § 636(b)(1). Where a party fails to object, however,
23 the court is not required to conduct "any review at all . . . of any issue that is not the
24 subject of an objection." *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth
25 Circuit has recognized that a district court is not required to review a magistrate judge's
26 report and recommendation where no objections have been filed. *See United States v.*
27 *Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review
28 employed by the district court when reviewing a report and recommendation to which no

1 objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
2 Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the view that
3 district courts are not required to review "any issue that is not the subject of an
4 objection"). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 The Court reviews the R&R *de novo*. The R&R finds that the Amended Complaint
9 "fails to provide a short and plain statement putting [D]efendants (and the Court) on
10 notice of his claims." (Dkt. no. 62 at 3.) The Court agrees. The Amended Complaint is
11 over 50 pages long and largely consists of copied language from various cases and
12 statutes interspersed with factual allegations. The result is an incoherent mix of
13 disconnected legal authority and facts from which the Court struggles to identify
14 Plaintiff's specific claims, the facts supporting those claims and against which
15 Defendants the claims are asserted. Unfortunately, Plaintiff's Objection is written in the
16 same incomprehensible style, and his Reply is brief and does not assist the Court in
17 understanding the Amended Complaint.


18 Even under the less stringent standards afforded Plaintiff, *Hines v. Kremer*, 404
19 U.S. 519, 520 (1970), the Amended Complaint fails to contain "a short and plain
20 statement of the claim showing that the pleader is entitled to relief" as required by Rule
21 8(a). As Plaintiff has failed to provide a proper amended complaint that satisfies the
22 requirements of Rule 8, despite two opportunities to do so, the Court agrees that it is
23 appropriate to strike the Amended Complaint with prejudice and proceed on the
24 remaining claims in Plaintiff's initial Complaint.

25 It is hereby ordered that the R&R (dkt. no. 62) is accepted and adopted in full.
26 Defendant's Motion to Strike Amended Complaint is granted (dkt. no. 52). Plaintiff may
27 continue to prosecute his Fourth Amendment search and seizure claims against

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1 Defendants Turner, Rocha, Herlean, Fenrich, Fox, Robinson and Miranda in their
2 individual capacities.

3 DATED THIS 28th day of July 2014.

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6 MIRANDA M. DU
7 UNITED STATES DISTRICT JUDGE
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